

## **USEPA BROWNFIELD SITE CHARACTERIZATION AND ASSESSMENT PROGRAM ENVIRONMENTAL SERVICES AGREEMENT**

THIS BROWNFIELD SITE CHARACTERIZATION AND ASSESSMENT PROGRAM ENVIRONMENTAL SERVICES AGREEMENT ("Agreement"), made and entered into this 11<sup>th</sup> day of February 2013 (the "Effective Date") by and between the County of Cuyahoga, Ohio (the "County"), a county and political subdivision of the state of Ohio, on behalf of the Department of Development ("DOD"), pursuant to the authority of Contracts and Purchasing Board Approval No. CPB2011-244 and Burgess & Niple ("Consultant"), an Ohio Corporation with principal offices located at 5085 Reed Road, Columbus, Ohio 43220 for services at the Facility (as defined below).

### **W I T N E S S E T H:**

**WHEREAS**, the County currently manages and administers an environmental assessment program, known as the USEPA Brownfield Site Characterization and Assessment Program (the "Program"); and

**WHEREAS**, the purpose of the Program is to inventory, characterize, and assess parcels of real property throughout the County of Cuyahoga, Ohio which qualify as a "brownfield site" under the Comprehensive Environmental Response Compensation, and Liability Act of 1980, 42 U.S.C. Chapter 103 ("CERCLA"), as amended by the Small Business Liability Relief and Brownfields Revitalization Act, Public Law 107-118 (the "Act"; for purposes of this Agreement, Act includes all subsequent amendments thereto and all regulations promulgated thereunder)); and

**WHEREAS**, under the Act, the County is the lead agency in the award of a Brownfields Hazardous/Petroleum Substances Assessment Cooperative Agreement Coalition grant by the USEPA (the "Grant"); and

**WHEREAS**, the County has both Grant monies and General Fund Economic Development monies available for the Program; and

**WHEREAS**, in order that the County may fulfill its responsibilities under the Grant, and in connection with the Program, the County requires the assistance of one or more environmental consultants; and

**WHEREAS**, the County is empowered by the constitution and laws of the state of Ohio and the Act to grant monies to the Consultant for purposes of conducting the Services (as defined below) with respect to the real property located at 1720 Willey Avenue, Cleveland, Ohio 44113 and more particularly described or shown on Exhibit A attached hereto and made a part hereof (the "Facility"); and

**WHEREAS**, the Consultant previously responded to a request for qualifications issued by the County and in such responses represented that it possesses the relevant professional experience, competence and knowledge, as required under the laws of the state of Ohio and the

Act, to render the services to be provided under this Agreement, and desires to render such services to the County with respect to the Facility; and

**WHEREAS**, the County has requested a scope of services to be provided with respect to the Facility, a copy of which is attached hereto as Exhibit B (the "Services"), and Consultant has provided and the County has accepted a proposal to perform the Services, a copy of which is attached as Exhibit C (the "Proposal"); and

**WHEREAS**, pursuant to §9.04 of the Ohio Revised Code, the Consultant has represented and the County has determined that the Consultant has no unresolved findings for recovery against it.

**NOW, THEREFORE**, in consideration of the premises, covenants, and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the County and the Consultant, agree as follows:

1. **Purpose of Services.** The Consultant acknowledges that the purpose of the Services to be provided pursuant to this Agreement are to inventory, characterize, and assess the Facility in accordance with the Act, and to investigate, determine and analyze reasonably identifiable risks inherent in the existence of hazardous materials or wastes, petroleum products, toxic chemicals or substances, pollutants or contaminants, or any other material, chemical, waste, or substance, in any of their various forms ("hazardous substances"), which, in the Reasonable Judgment of the Consultant (as defined below), could give rise to liability or responsibility under any federal, state or local laws, statutes, regulations, ordinances, protocols, guidance or standards or under common law ("environmental laws"), including without limitation, the presence of hazardous substances in the soil, groundwater, or air associated with the Facility. For purposes of this Agreement, "Reasonable Judgment" means such skill, care and judgment normally exercised by recognized professional firms performing services of a similar nature in the State of Ohio in accordance with the laws of the State of Ohio and the Act.

2. **Quality of Services.**

A. The Consultant shall provide and direct any and all qualified personnel necessary to perform the Services required pursuant to the express and implied terms and conditions of this Agreement, with a degree of skill, care and judgment normally exercised by recognized professional firms performing services of a similar nature in the State of Ohio.

B. The Consultant shall assign the personnel identified in the Proposal to perform the Services, and shall not remove or replace those individuals without the prior written approval of the County, which approval shall not be unreasonably denied or withheld; the County's decision with respect to such removal or replacement shall be given in a timely manner so as not to delay Consultant's completion of the Services by the Completion Date. The Consultant represents and warrants that the identified personnel will be under the supervision or responsible charge of a person meeting the definition of environmental professional as defined in the Act and any current or proposed regulations thereunder.

C. Consultant represents that it has developed a generic Quality Assurance Project Plan ("QAPP") meeting the requirements in "Quality Assurance Guidance for Conducting Brownfields Site Assessment", as outlined by current U.S. EPA guideline for Cuyahoga County Department of Developments Community Assessment Program. This generic QAPP will be submitted and approved by USEPA, Region V for approval prior to conducting any and all Phase II Environmental Assessment work for Cuyahoga County Department of Development. Consultant acknowledges and agrees it shall not receive compensation for any associated work in regards to the creation, preparation, and approval of the generic QAPP. Consultant shall customize its generic QAPP to create a site-specific Sampling and Analysis (SAP) workplan for the Facility, which includes Phase II environmental investigation for the Cuyahoga County Department of Development. Costs to customize the QAPP to the Facility shall be compensated under this Agreement.

3. **Scope of Services.** Consultant shall perform the Services in accordance with this Agreement, including the General Terms and Conditions attached hereto as Exhibit D, and the Proposal. Consultant acknowledges that Phase II service will commence ONLY upon approval of the SAP work plan by the County or US EPA, as applicable, and County has issued an authorization to proceed. County reserves the right, in its sole discretion, to terminate this Agreement upon completion of the Phase I Services. In the event of a conflict between the terms of the Proposal, the terms the Services, and/or the terms of this Agreement, the County shall, in its sole discretion, determine whether the terms of the Proposal, the Services, or this Agreement shall control.

4. **Compensation.**

A. In consideration of Consultant's faithful performance of the Services, as directed by the County, Consultant shall receive compensation in an amount not to exceed \$40,978.00.

B. Compensation for Phase II Services, if any, shall be documented in accordance with paragraph 3 above, and shall be computed for each quarter of an hour incurred in connection with the Phase II Services at the hourly rates set forth in Section I of the rate schedule ("Rate Schedule") entitled "Fees for Professional Services of the General Terms and Conditions," attached hereto including all present, state, federal and local sales, use, excise, business and occupation and transportation taxes. Phase II Services, such as sub-surface investigation or other Services which may become necessary due to unforeseen circumstances shall only be performed by the Consultant upon prior written approval of the County, and at the rates set forth under Section I of the Rate Schedule plus reimbursable expenses calculated in accordance with Section II of the Rate Schedule.

C. In the event that Consultant encounters issues which would require additional time or expense, Consultant shall immediately notify the County and shall not proceed until the County has approved such additional time or expenses in writing.

D. **Invoices.** Detail on all invoices to County will follow the format specified in the budget attached to the Proposal. All invoices shall include copies of all

subcontractor invoices. Markup on subcontractor costs in excess of 5% will be disallowed.

**5. Time of Performance.**

A. The Consultant will initiate the Services within one week of receipt of a written authorization to proceed from DOD. Upon completion of the Services, Consultant shall provide the County with a written report or reports, as described in the Section 6, below.

B. Notwithstanding anything contained herein to the contrary, this Agreement shall end and be of no further force and effect on and after Tuesday February 11<sup>th</sup> 2014, unless extended by a written amendment to this Agreement executed by the Consultant and the County.

**6. Report.** Any reports prepared by Consultant pursuant to the Agreement shall first be prepared and submitted, with all supporting information, to the County in draft form for initial review; the County reserves the right to request that such draft report and supporting information be submitted in electronic (e.g., Word or Adobe Acrobat) and/or non-electronic form. All final reports will be delivered to the county and/or designated recipients in format specified by county on a project by project basis. Not to exceed three electronic versions and one possible non-electronic (paper version) per report.

**7. Termination.** Either the County or the Consultant may suspend the performance by the Consultant of all or any part of the Services to be provided under this Agreement or terminate all or any part of this Agreement, in either case, by written notice sent by certified mail, return receipt requested to a non-terminating party. Such suspension or termination shall be effective two (2) business days after receipt of the written notice. Both parties agree to meet on one occasion after such notice is given to discuss the reason for such suspension or termination. In the event of termination, the Consultant shall be entitled to compensation, for work completed up to the date of termination, in accordance with Section I of the Rate Schedule, together with its reimbursable expenses calculated as provided in Section II of the Rate Schedule and shall submit a final invoice to the County within thirty (30) days after the effective date of such termination. Upon request by the County, the Consultant will promptly furnish the County with a written report based upon the data and information collected by the Consultant as of the date of termination of this Agreement, the cost of which shall be paid for in accordance with Section I of the Rate Schedule.

**8. Representations and Warranties.** The Consultant represents and warrants that:

A. The Consultant shall have obtained and shall maintain any and all licenses and permits required by environmental laws for the performance of its Services pursuant to this Agreement;

B. The Consultant shall comply with all applicable environmental laws in performing the Services hereunder, and shall comply with directives of governmental

agencies and the County relating to safety, security, traffic or other like matters relating to the Facility; and

C. The Consultant's professional Services will be performed, its findings obtained and its recommendations prepared in accordance with generally and currently accepted scientific and engineering principles and practices and in accordance with industry standards of care exercised by recognized Burgess & Niple performing Services in Ohio, as established at the time the Services hereunder are to be performed.

9. **Indemnity.** The Consultant shall defend, hold harmless and indemnify the County from and against all claims, actions, suits, liabilities, damages and expenses (including attorney's fees) for personal injury (including death), property damage or other claims and liabilities arising out of, related to, or in connection with the Consultant's Services pursuant to this Agreement, including any Services performed by any subcontractor or agent of the Consultant, excepting only such claims, actions, suits, liabilities, damages and expenses arising directly out of the County's willful misconduct or gross negligence.

10. **Insurance.** Consultant agrees to maintain at all times during the life of this Agreement worker's compensation, commercial general liability, comprehensive business automobile, professional liability (in particular covering errors and omissions), and umbrella liability insurances. Commercial General Liability, Contractors Pollution Legal Liability & Professional Liability, (in particular covering errors and omissions), shall be in an amount not less than Two Million Dollars (\$2,000,000) while the comprehensive business automobile, and umbrella liability insurances shall be in an amount not less than One Million Dollars (\$1,000,000).

Each of the Insurance Policies shall state that the issuing company thereof shall have no right of recovery or subrogation against the County or its agents, directors, officers, employees, representatives or insurers, and that the County shall in no way be held responsible for the payment or satisfaction of any deductible thereunder.

Consultant shall name the County and its employees as an additional insured on each of the Insurance Policies, up to the amounts specified herein, and shall furnish the County with Certificates of Insurance stating to that effect.

Should any one of the Insurance Policies terminate or be cancelled, refused, or for any other reason no longer be of effect, the Consultant and Insurance Carrier shall immediately furnish written notice to the County of the fact. At such time such notice is received by the County, this Agreement shall be held null and void and no longer enforceable or of effect; provided, however, that if the Consultant is able to obtain coverage from another insurer within five (5) business days of the loss of coverage, this Agreement shall continue to be in full force and effect and shall remain binding on the parties hereto.

All Insurance Policies required hereunder shall cover and include the specific work contemplated by the terms hereof. If such policies do not cover such work, then Consultant shall not be in conformity with the terms hereof, unless Consultant obtains written permission from the County to not be in conformity with such terms.

11. **Independent Contractor.** The Consultant is acting and shall perform its Services under this Agreement as an independent contractor. Nothing contained in this Agreement or in the relationship between the County and the Consultant shall be deemed to constitute a partnership, joint venture, or any other relationship among them, and the Consultant's authority is strictly limited to performing the Services set forth herein in accordance with the terms and conditions hereof. The Consultant shall have no authority to execute any contracts, subcontracts or agreements for or on behalf of the County, nor to assume or create any obligation or liability or make any representation, covenant, agreement or warranty, express or implied, on the County or the County's behalf, or to bind the County in any manner whatsoever, without, in each case, written consent, approval, or instructions having been given or provided by the County. Any and all subcontracts shall be submitted to and approved by the County prior to execution and delivery.

12. **Audits.** The Consultant by his, her or its acceptance of the monies granted hereunder agrees to cooperate in all regards with any audit of the Grants and distributions therefrom, where such audit is performed by any governmental entity or agency duly authorized and empowered to undertake such audit by the Act, whether such entity or agency be from the County of Cuyahoga, State of Ohio or Federal Government (the "Auditor"). Consultant agrees to present information in such format as reasonably requested by the Auditor, and to comply in all regards with all requirements and procedures as may be reasonably formulated by the Auditor from time to time.

13. **Assignment, Transfer or Delegation.** Neither this Agreement nor any of the rights, interests or obligations of the Consultant hereunder may be assigned, transferred or delegated in whole or in part by the Consultant without the prior written consent of the County, which consent may be denied, withheld or granted in the sole discretion of the County.

14. **Notices: Entire Agreement.** Any notice or other communication required or permitted hereunder shall be in writing and shall be deemed to have been given if and when personally delivered or on the second business day after being deposited in United States registered or certified mail, postage prepaid, and addressed to the County or the Consultant, as the case may be, at the address set forth on the signature page of this Agreement or to such other address as the County or the Consultant may have designated in accordance herewith. The terms and conditions of this Agreement, including all exhibits and the Rate Schedule attached hereto, constitute the final written expression of the agreement between the parties and are a complete and exclusive statement of the terms and conditions of this Agreement and may not be amended except in a writing signed by the parties hereto. Any amendments or modifications to this Agreement and any consents, approvals or instructions which may be required of the County under this Agreement may be given only by the County Administrator or Deputy Administrator. All other notices or other communications required or permitted hereunder may be given by an authorized representative of the County.

15. **Confidentiality.** The Consultant, its officers, agents and employees shall perform the Services in a discrete, confidential manner and shall not disclose any information or materials and reports gathered pursuant to this Agreement, or discuss such information or materials with anyone, other than authorized County representatives, without the prior written permission of the

County; provided, however, that the Consultant is expressly authorized and permitted to disclose, where relevant, any such information or materials to any third parties who are required under the terms of this Agreement to be contacted by Consultant in connection with its Services hereunder or who may be entitled to such information as a matter of law or pursuant to court order. All such information, materials and reports shall belong to the County.

**16. Governing Law & Forum.** This Agreement shall be governed by the laws of the State of Ohio. Any suit, action, or proceeding brought under this Contract shall be in a state or federal court of competent jurisdiction located in Cleveland, Ohio, and the parties agree to the exclusive jurisdiction and venue of such court to resolve same.

**17. Applicable Ordinances:** This Agreement shall be subject to all applicable County ordinances, including, but not limited to: i) the Cuyahoga County Ethics Ordinance, ii) the Cuyahoga County Inspector General Ordinance, and iii) the Cuyahoga County Board of Control, Contracting and Purchasing Ordinance (the "County Ordinances"). Consultant shall comply with all County Ordinances as an integral part of this Agreement. . Copies of all County Ordinances are available on the County Council's web site at <http://council.cuyahogacounty.us/>.

**18. Force Majeure.** The time for performance or observance of any of the covenants and agreements to be performed or observed by Consultants under this Agreement shall be extended for delays caused by Force Majeure. For the purposes hereof, the term Force Majeure shall mean and include: (i) delays in the performance of the work by reasons for strikes, lockouts, accidents, acts of God or other causes beyond the Consultant's reasonable control, (ii) the failure by the County to furnish necessary information required under this Agreement, (iii) the failure by the County to approve or disapprove the Consultant's work as and when required under this Agreement, (iv) delays resulting from late, slow or faulty performance by the County, other contractors or consultants of the County, or by government agencies whose performance of work is precedent to or concurrent with the performance of the Consultant's work under this Agreement.

**19. Disputes.** Any dispute between Consultant and the County arising out of or relating to this Agreement, except for disputes relating to right of either party to terminate this Agreement in accordance with Article 8, shall be subject to mediation as an express condition precedent to the institution of any legal or equitable proceedings by either the Consultant or the County. The parties shall endeavor to resolve any such dispute through mediation conducted pursuant to the Construction Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party and with the American Arbitration Association. The prevailing party shall be entitled to reimbursement of the mediator's fee and the filing fees paid by such party. In addition, all costs and expenses incurred by either party in connection with the mediation shall be borne and paid by the unsuccessful party. The mediation shall be held in the County of Cuyahoga (in a place selected by County), unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

**20. Electronic Signature.** By entering into this contract for environmental assessment services, I agree on behalf of the contracting business entity, its officers, employees, subcontractors, subgrantees, agents or assigns, to conduct this transaction by electronic means by

agreeing that all documents requiring county signatures may be executed by electronic means, and that the electronic signatures affixed by the County to said documents shall have the same legal effect as if that signature was manually affixed to a paper version of the document. I also agree on behalf of the aforementioned entities and persons, to be bound by the provisions of Chapters 304 and 1306 of the Ohio Revised Code as they pertain to electronic transactions, and to comply with electronic signature policy of Cuyahoga County.

**IN WITNESS WHEREOF**, the parties have hereto executed this Agreement as of the Effective Date.

**BURGESS & NIPLE**

BY: 

Ronald R. Schultz, Chairman

**Cuyahoga County Executive**

Edward FitzGerald, County Executive

BY: 

Edward FitzGerald

2013-02-15 09:13:53



## **EXHIBIT A**

### **DESCRIPTION OF FACILITY**

**The** Former Fairmont Creamery Site (“Facility”) is located at 1720 Willey Avenue, Cleveland, Ohio 44113.

The Facility is located at Parcel 004-05-001 in Cleveland, Ohio.

The Facility is bounded by West 17<sup>th</sup> Street to the East, and Willey Avenue to the South.

The Facility consists of a 5- story brick building circa 1930.

The Facility is zoned for manufacturing and light assembly land uses.

The one parcel encompasses approximately 1.4 acres.

## **EXHIBIT B**

### **REQUESTED SERVICES LIST**

1. Phase I Property Assessment(s) as:
  - ☐ ASTM E1527-05 "Standard Practice for Environmental Site Assessment: Phase I Environmental Site Assessment Process" meeting the requirements for "all appropriate inquiries" under the Act and any regulations promulgated thereunder, 40 C.F.R. Part 312; or
  - ☐ Ohio EPA Voluntary Action Program Phase I Property Assessment in accordance with Ohio Revised Code § 3746.04 (B)(3) and Ohio Administrative Code §3745-300-06, including a VAP Eligibility Analysis in accordance with Ohio Administrative Code §3745-300-02; provided however, such preliminary assessment of the Facility shall meet and be performed in accordance with the criteria and requirements set forth in Title II, Subtitle A, Section 223 (2) (B) of the Act [42 U.S.C. 9601 (35)] or any current or proposed regulations promulgated thereunder.
2. \_\_\_ Regulatory File Review, as requested.
3. X Ohio EPA Voluntary Action Program Phase II Property Assessment under O.R.C. 3746.04 (B)(4) and AS MORE CLEARLY DESCRIBED IN ATTACHED PROPOSAL (Exhibit C)..
4. X Site-specific Sampling and Analysis Plan meeting the requirements set forth in the generic Quality Assurance Project Plan, and under O.R.C. 3746.04(B)(4) and O.A.C. 3745-300-07 for VAP; and under 40 C.F.R. 31.45, and EPA DQO and QA/QC Guidance Documents for Non-VAP
5. \_\_\_ Bureau of Underground Storage Tank Regulations Closure Assessment and/or 3-Tier Evaluation under O.A.C. 1301:7-19-12 and -13
6. \_\_\_ Asbestos Survey under O.R.C. 3710; O.A.C 3745-20-02 – O.A.C. 3745-20-04; 40 C.F.R. 763.86 or equivalent; 40 C.F.R. 61 subpart M
7. \_\_\_ Lead Paint Inspection (to determine the presence of lead-based paint) under O.R.C. 3742 .
8. \_\_\_ Risk Assessment and Report for Voluntary Action Program projects conducted in accordance with O.R.C. 3746 and O.A.C. 3745-300-08 (Generic) and/or O.A.C. 3745-300-09 (Site-Specific), or for leaking USTs regulated by BUSTR conducted in accordance with BUSTR's Site Feature Scoring System (Generic) or 4-Tier (Site-Specific) risk assessment documents.
9. \_\_\_ Remedial Action Plan and Operation and Maintenance Plan under O.R.C. 3746 and O.A.C. 3745300-15 for Voluntary Action Program projects, or O.A.C. 1301:7-9-13 for leaking USTs regulated by BUSTR.
10. \_\_\_ Urban Setting Designation and/or Groundwater Feasibility Study conducted in accordance with O.R.C. 3746 and O.A.C. 3745-300-10(D).

## **Exhibit C**

### **Consultant's Proposal**

# BURGESS & NIPLE

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Akron Centre Plaza | 50 South Main Street | Suite 600 | Akron, OH 44308 | 330.376.5778

Ms. Janise Bayne  
Program Manager, Brownfield Assessment Grants  
Cuyahoga County Department of Development  
Reserve Square  
1701 East 12<sup>th</sup> Street, First Floor  
Cleveland, OH 44114

Re: Proposal No. 13-1001(R)  
Limited VAP Phase II Subsurface Investigation for  
the Former Fairmont Creamery  
1720 Willey Avenue  
Cleveland, Ohio

January 14, 2013

Dear Ms. Bayne:

Burgess & Niple, Inc. (B&N) is pleased to submit this Proposal to the Cuyahoga County Department of Development (CCDD) for the professional services necessary to conduct a limited Voluntary Action Program (VAP) Phase II Subsurface Investigation for the Former Fairmont Creamery building located at 1720 Willey Avenue, Cleveland, Ohio (Property). The VAP Phase I Property Assessment (PA) completed by Hill & Associates (Hill) for the Property, dated November 2012, stated, "*Based on the findings of this Phase I Property Assessment, Hill recommends Phase II activities be conducted at the Property in accordance with OAC 3745-60-09/31c1.*" Additional investigation in the form of a VAP Phase II PA (Ohio Administrative Code [OAC] 3745-300-07) is recommended for the Property to determine to what extent historical uses of the Property have resulted in impacts to soil and/or groundwater.

The Phase I PA indicated the Property was developed as a dairy in the 1930s and used for the production and distribution of milk, eggs, and other dairy products through 1970. The Property has been used by South Shore Finishes, Inc., for metal plating since 1985; however, much of the five-story building is vacant. The Phase I listed six Identified Areas (IAs). Underground storage tanks (USTs) may still be present on the property in several locations. USTs were identified from Sanborn maps or Fire Department records as currently or formerly present at the Willey Avenue entrance (IA-1), the West 17<sup>th</sup> Street yard (IA-2), and IA-6. Current plating operations (IA-3) include the plating line, wastewater treatment area, and the hazardous waste accumulation area. IA-4 was identified as air compressor floor staining, IA-5 is the abandoned rail spur, and a Recognized Environmental Condition (REC) is floor staining from an unknown source on the West 17<sup>th</sup> Street side of the building.

The future use of the property will be for mixed-use residential and commercial. Residential use will be on the upper floors with commercial/retail use on the lower floors. Since part of the intended use will be residential, the entire property must conform to a residential land use scenario.

The current owner will address the closure of the plating line (IA-3). After the line has been properly closed and the equipment removed, B&N can assess the areas where the equipment had been used. This Proposal assumes that only one mobilization will be necessary. If the drilling and sampling tasks for IA-3 cannot be done concurrently with the other tasks, an additional mobilization charge will be required.

The property is located in an Urban Setting Designation; therefore, groundwater is not used for drinking water. If groundwater is located within 30 feet of the surface, monitoring wells will be installed. Based on the well log search performed during the Phase I PA, the wells closest to the Property were installed at depths between 11 and 30 feet.

This Proposal will address the subsurface soil and groundwater, if encountered, in the multiple IAs. Wells will not be installed inside the building due to overhead constraints and will only be installed if subsurface soils in IAs indicate impacts in excess of residential land use standards. Assessment of asbestos and lead-based paint is not included in this Proposal. Universal wastes and general building issues are not included in this Proposal.

## I. SCOPE OF SERVICES

Upon receipt of written authorization to proceed from CCDOD, B&N will provide the following services for a Limited VAP Phase II Subsurface Investigation based on the recommendations provided in the previous Phase I PA completed by Hull for the Property.

- A. A Ground Penetrating Radar (GPR)/Electro Magnetic (EM) survey will be performed in IAs 1, 2, and 6 to determine if there are USTs still remaining in the ground. A subcontractor will be utilized for this work and they will issue a brief letter report after the survey has been completed showing anomalies and possible buried metallic objects to aid in placing the soil borings.
- B. Prepare a Workplan consisting of all required tasks for approval from CCDOD. It is anticipated that another site visit will be required after the current owner had removed the plating line and associated equipment and performed a generator closure. This task also includes project management duties associated with B&N's responsibilities to complete tasks outlined within this Proposal, including but not limited to, communications with CCDOD, U.S. Environmental Protection Agency (EPA) and coordination with B&N's contractors needed to complete Phase II subsurface activities. B&N will contact the Ohio Utility Protection Service (OUPS) within 48 hours but no more than 10 days prior to advancing soil borings on site.
- C. It is expected that a Geoprobe® can be used for all soil and monitoring well installation (up to 25 feet) on the property. B&N will retain a drilling contractor to complete up to 26 soil borings to 10 feet below ground surface (bgs) using direct push (DP) technology with a Geoprobe® unit. There will be three borings advanced in each IA (there were three parts of IA-3 associated with the plating operations). If there is no evidence of present or former USTs in IA-2, no borings will be advanced.

A B&N geologist will direct and observe all drilling activities as well as record soil types encountered and any other pertinent observations on boring logs. Soils samples will be collected continuously until final depth of the boring is achieved. Each soil sample will be collected in 2-foot soil intervals. A representative portion of each 2-foot soil interval will be immediately collected into a sealable plastic baggie for headspace field screening using a properly calibrated photoionization detector (PID) to measure the possible presence of volatile organic compound (VOC) content within the subsurface samples. The peak PID field screen reading for each 2-foot soil sample interval will be recorded on the boring log. Two soil samples per soil boring will be submitted for laboratory analysis.

Each soil sample submitted for laboratory analysis will be submitted to an Ohio VAP-certified laboratory for VAP-certified laboratory analysis and will be analyzed for:

- IA-1 – benzene, toluene, ethylbenzene, xylene (BTEX); polynuclear aromatic hydrocarbons (PAH); and Gas Range Organics/Diesel Range Organics (GRO/DRO)
- IA-2 – BTEX, Methyl Tertiary Butyl Ether (MTBE), lead

- IA-3 – total cyanide, VAP metals, pH, hexavalent chromium
  - IA-4 – total petroleum hydrocarbon (TPH) – GRO/DRO, PAH
  - IA-5 – VOCs, semi-volatile organic compounds (SVOCs), VAP metals
  - IA-6 – VOCs, SVOCs, VAP metals
  - REC – TPH – GRO/DRO, PAH
  - The sump present in the basement will also be sampled for hexavalent chromium, VAP metals, and pH.
- D. Install three, 2-inch diameter, monitoring wells to 25 feet bgs or less, depending upon the depth of the first saturated zone, with 5- to 10-foot-long, 0.010-slot, Schedule 40 polyvinyl chloride (PVC) screens. One of the three wells will be installed in IA-1; one well will be installed in IA-5 as close to the location of the former plating line and wastewater treatment areas possible, and the third well will be installed in IA-7. This should give a good approximation of the groundwater flow direction. If groundwater is not encountered by 25 feet, wells will not be installed. The monitoring wells will be installed using hollow stem augers (HSA) that will drill an approximate 8-inch diameter borehole. After the well construction materials have been threaded together and the well is placed through the auger string to the appropriate depth, the annular space of the borehole of the screened interval plus 2 feet above the top of screen will be filled with No. 5 silica sand followed by a 2-foot thick bentonite seal consisting of medium bentonite chips that will be hydrated with potable water. After the bentonite seal is completed, the remaining annular space of the borehole will be filled with bentonite grout. The wells will be finished with a protective cover that sticks up above the ground surface.
- H. Develop three monitoring wells by purging a minimum of 3 well system volumes (volume of water within the sand pack and the well column) using a new disposable bailer for each well. Measure field parameters pH, specific conductance, temperature, and turbidity during well development activities. Field readings will be recorded on well development record forms. Survey top of casing elevation and adjacent ground surface elevation for each well on site.
- F. Collect one groundwater sample from each of the three monitoring wells, subsequent to well development activities, with a portable bladder pump using low-flow (less than 500 milliliters per minute) sampling techniques. One duplicate and one trip blank sample will also be collected and analyzed for quality assurance/quality control (QA/QC) purposes. Groundwater samples will be submitted to a laboratory for VAP-certified analysis of VAP metals and hexavalent chromium, plus other chemicals of concern (COCs) if any were present in the soil samples.
- G. Collect one composite soil sample from all of the soil drums on site generated from drilling activities associated with this Phase II Subsurface Investigation for Toxicity Characteristic Leaching Procedure (TCLP) metals analysis. This sample will be required by the drum disposal company prior to removing the drums off site to an appropriate disposal facility.

- H. Investigative Derived Waste (IDW) Disposal. B&N estimates six 55-gallon drums filled with soil and two 55-gallon drums filled with groundwater will be generated based on the Scope of Services included within this Proposal. B&N will retain a disposal company to remove the drums off site for proper disposal.
- I. Complete and submit Limited VAP Phase II Subsurface Investigation report to CCDOD. The report will include a summary of field investigation activities, soil boring and monitoring well installation logs, well development and sampling record forms, applicable tables and figures, evaluation of laboratory results, and a conclusion. All report information will be suitable for use in a VAP No Further Action (NFA) letter although this Scope of Work does not guarantee that any potential contamination will have been delineated or the Limited Phase II report suitable as a NFA letter.

## **II. PROFESSIONAL FEES**

We propose to complete these services on the basis of the hourly rates and reimbursable expenses as shown on Attachment 1. The cost of these services will not exceed \$40,978 unless approved by the CCDOD. This cost includes an IDW disposal fee of \$750 which includes laboratory testing and assumes that the soils are nonhazardous and can be taken to a solid waste landfill. If we determine that soils are used for soil or groundwater cleanup, then this cost will be less.

This Proposal assumes that only one site mobilization will be necessary after the plating line has been shut down, the generator closure completed, and all equipment removed.

Invoices will be issued monthly and are payable upon receipt. Overtime will be billed at 1.5 times the normal rate for nonexempt employees. A finance charge of 1.5 percent per month will be added to any amount unpaid 30 days past the invoice date. B&N may cease work or withhold delivery of final product if payment is not current. If work is halted due to nonpayment, additional costs incurred for restaffing the project will be billed as an additional fee.

## **III. ADDITIONAL SERVICES**

Additional services will only be performed by B&N upon submission and approval of an agreed Scope of Work and associated professional fee.

## **IV. ASSUMPTIONS AND CCDOD-PROVIDED TASKS**

In preparation of this Proposal, B&N has assumed that the following will be true prior to and during completion of the proposed field activities described in this Proposal:

- A. The CCDOD will have obtained a site access agreement from the current Property owner to allow for the subsurface investigation field activities to be completed.
- B. All plating line equipment and associated wastes will have been removed. Access to all parts of the building and outside areas will be provided.

## **V. STANDARD OF PERFORMANCE**

### **A. Professional Services**

B&N shall perform its services in accordance with the standards for such professional services which prevail in the area in which, and at the time that, those services are rendered. No warranty, guarantee, or representation, either express or implied, is included or intended in any materials, plans, specifications, designs, reports, or other services provided by B&N.

### **B. Insurance**

The insurance maintained by B&N is summarized below:

1. B&N shall comply with all Workers' Compensation laws and, if required, provide certificates of coverage in connection with this Agreement.
2. During the term of this Agreement B&N will maintain in full force and effect the following minimum coverages and will provide to the CCDOD certificates of coverage upon request:
  - a. Public liability and automobile liability insurance in an amount not less than \$1,000,000 on account of any one accident or occurrence.
  - b. Property damage liability insurance in an amount not less than \$1,000,000 for damages on account of any one accident or occurrence.
  - c. Excess Liability Umbrella form for bodily injury and property damage in an amount not less than \$15,000,000.
  - d. Professional liability insurance in an amount not less than \$10,000,000 for damages on account of any claims for negligent acts, errors, or omissions.

### **C. Client Responsibility**

The CCDOD will indemnify B&N and their consultants, agents, and employees against all claims, damages, losses and expenses, direct and indirect, or consequential damages (including but not limited to fees and charges of attorneys and court and arbitration costs) arising out of or resulting from any acts or omissions of, or any information provided by the CCDOD, its agents, or contractors, including without limitation:

1. the actual, alleged, or threatened discharge, dispersal, or escape of pollutants, environmental contamination, hazardous materials, or waste (collectively, "pollutants") by the CCDOD;
2. any governmental or regulatory directive or request that B&N or anyone acting under B&N's direction or control test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize pollutants on or from property owned by the CCDOD;
3. specification by the CCDOD or its agents of any product, material, or process containing asbestos;



4. installation, modification, abatement, replacement, or removal by the CCDOD or its contractors of any product, material, or process containing asbestos.

The foregoing indemnification by the CCDOD will not apply to the extent that any claims or damages arise out of any negligent act or omission of B&N.

## VI. VALIDITY AND RESPONSE

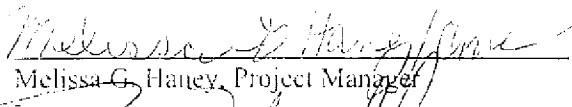
This Proposal is valid if authorized on or before January 31, 2013.

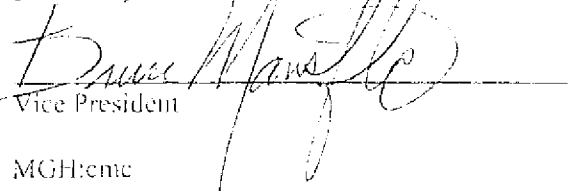
We appreciate the opportunity to submit this Proposal and look forward to working with you on this project. If you are in accord with the preceding outline, please acknowledge by signing below and returning one copy as our authorization to proceed.

Respectfully,

BURGESS & NIPLE, INC.

CUYAHOGA COUNTY DEPARTMENT  
OF DEVELOPMENT

  
Melissa G. Haney, Project Manager

  
Vice President

MGH:emc  
Attachment

\_\_\_\_\_  
Date

## **Exhibit D**

### **GENERAL TERMS AND CONDITIONS**

#### **I. Fees for Professional Services**

The fees for professional services will include all amounts as specified in the January 14, 2013 dated proposal for all employees/subcontractors listed on said proposal. All time including travel hours spent on the project by professional, technical, and clerical personnel will be invoiced. Unless otherwise stated, the foregoing rates shall apply to both Phase I Services and Phase II Services set forth in the Agreement to which these terms and conditions are attached, it being understood that, unless otherwise provided in the Agreement, the compensation payable to the Consultant is lesser of the actually incurred amount utilizing the foregoing rate schedule and the maximum amount set forth in the Agreement and that the Agreement does not provide for a fixed lump-sum price. If it is apparent that the maximum amount is insufficient to complete the project satisfactorily, the County will be advised as soon as practicable.

#### **II. Reimbursable Expenses**

The sum of \$40,978.00 for the scope of services set forth by Burgess & Niple in the January 14, 2013 document "Proposal No. 13-1001 @ Limited VAP Phase II Subsurface" submitted by Burgess & Niple, to the County will be the maximum amount of compensation payable to the Consultant for expenses incurred.

#### **III. Invoices and Payments**

Consultant shall be paid monthly on the basis of invoices submitted. The invoices submitted will be for the portion of the agreed upon compensation earned by the Consultant during that month. Consultant shall be paid for all such invoices within thirty (30) days of submittal. In the event the County disputes any invoice or any portion thereof, the undisputed portion shall be paid to Consultant in accordance with the Agreement. Invoices not in dispute and unpaid after thirty (30) days shall accrue interest at the rate of one and one-half percent per month (or the maximum percentage allowed by law, whichever is the lesser). Payment shall be made to the Consultant, as follows: "Burgess & Niple 5085 Reed Road, Columbus, Ohio 43220". Additional support documentation, if requested by the County shall be furnished at an additional administrative charge as required to compile the documentation.

#### **IV. Insurance**

The Consultant is covered by worker's compensation insurance, employers' liability insurance, commercial general liability insurance covering bodily injury (including death) and property damage, automobile liability insurance covering bodily injury (including death) and property damage, professional consultants liability insurance, and contractor's pollution legal liability insurance as follows:

Worker's Compensation	Minimum Statutory Amount
Employers' Liability Insurance	Minimum Statutory Amount
Commercial General Liability Insurance	\$ 2 million
Professional Errors and Omissions Liability Insurance	\$ 2 million
Automobile Liability Insurance	\$ 1 million
Contractors Pollution Legal Liability Insurance	\$ 2 million

Consultant shall deliver certificates evidencing such insurance coverage to the County before commencing work under this proposal. Each such policy shall provide that such coverage will not be changed or canceled without at least 30 days' prior written notice to the County.

**Exhibit E**

**Project Budget**

<b>Project Name:</b>	Fairmont Creamery			
<b>Site Location:</b>	Willey Avenue			
<b>Date of Proposal:</b>	14-Jan-12			
<b>Task 1 - Project Management</b>				
Communications with Cuyahoga County, OUPS, and contractor coordination.				
<b>Labor Charges by Classification</b>	<b>Units</b>	<b>Rate</b>	<b>Total Cost</b>	
Sr. Project Manager/Geologist	20	\$139.00	\$2,780.00	
Principal	2	\$190.00	\$380.00	
Geologist	4	\$79.00	\$316.00	
Technology Charge at \$4.50/hour	26	\$4.50	\$117.00	
<b>EXPENSES</b>			\$0.00	
<b>SUBCONTRACTORS</b>	0	\$0.00	\$0.00	
<b>SubTotal of Task</b>			\$3,593.00	
<b>Task 2 - Field Work</b>				
Retain contractor to conduct a Ground Penetrating Radar Survey				
Direct 20 soil borings to 10', collect soil and groundwater samples for combinations VOC, BTEX, SVOC, PAH, (GRO/DRO) pH, total cyanide, hexavalent chromium lab analysis.				
Install 3 Monitoring wells if GW encountered below 25 feet				
<b>Labor Charges by Classification</b>	<b>Units</b>	<b>Rate</b>	<b>Total Cost</b>	
Sr. Project Manager/Geologist	10	\$139.00	\$1,390.00	
Geologist	79	\$79.00	\$6,241.00	
<b>EXPENSES</b>				
Mileage	500	\$0.57	\$282.50	
Field Equipment and supplies	1	\$812.00	\$812.00	
Technology Charge at \$4.50/hour	89	\$4.50	\$400.50	
<b>SubTotal</b>			\$9,126.00	\$0.00
<b>SUBCONTRACTORS (with 10% markup)</b>				
Grumman Geophysical		\$2,100.00	\$210.00	\$2,310.00
Buckeye Probe		\$6,900.00	\$690.00	\$7,590.00
Pace Laboratory		\$9,843.00	\$984.30	\$10,827.00
<b>Subtotal of Contractors</b>				\$20,727.00
<b>SubTotal of Task</b>			\$29,853.00	
<b>Task 3 - Drum Disposal</b>				
Retain contractor to properly dispose of 8 drums of soil and water plus one analysis of TCLP metals.				
<b>Labor Charges by Classification</b>	<b>Units</b>	<b>Rate</b>	<b>Total Cost</b>	
Sr. Project Manager/Geologist	2	\$139.00	\$278.00	
<b>EXPENSES</b>				
Technology Charge at \$4.50/hour	2	\$4.50	\$9.00	
			10% Markup	SubTotal
<b>SUBCONTRACTORS (with 10% markup)</b>	1	\$900.00	\$90.00	\$990.00

<b>SubTotal of Task</b>			\$1,277.00	
<b>Task 4 - Limited Phase II Subsurface Investigation Report</b>				
Report, Tables, Figures, Boring/Well Logs, Attachments, and Copies				
<b>Labor Charges by Classification</b>	<b>Units</b>	<b>Rate</b>	<b>Total Cost</b>	
Sr. Project Manager/Geologist	22	\$139.00	\$3,058.00	
Geologist	30	\$79.00	\$2,370.00	
CADD Operator	4	\$79.00	\$316.00	
Clerical	2	\$75.00	\$150.00	
Technology Charge at \$4.50/hour	58	\$4.50	\$261.00	
<b>EXPENSES</b>				
reproduction and shipping		100	100	
			10% Markup	SubTotal
<b>SUBCONTRACTORS (with 10% markup)</b>	0	\$0.00	\$0.00	\$0.00
<b>SubTotal of Task</b>			\$6,255.00	
<b>Project Total</b>			\$40,978.00	

<b>DBE Percentages</b>	<b>% Total</b>	<b>\$ Amount</b>
MBE Contractor	0	0
WBE Contractor	16.8	6000